1127.

SUPREME COURT OF THE UNITED STATES.

No. 54.

L. PRICE, FOR THE USE OF DANIEL W. GANTLEY, PLAINTIFF IN ERROR,

vs.

MARTHA A. SESSIONS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Writ of alias fieri facias	1	2
Marshal's return	2	3
Claimant's affidavit	3	3
Claimant's bond	4	4
Plaintiff's plea	6	5
Replication of claimant	6	5
Jury sworn—Verdict	7	5
Bill of exceptions	7	5
Transcript of the record in the case of L. Price, for use, &c., vs. Samuel Fernandis et al.	8	6
Summons	8	6
Marshal's return	9	6
Declaration	9	7
Judgment	12	8
Affidavit of N. G. Watts	12	8
Last will and testament of Russell Smith	13	9
Proceedings in the court of probate	19	11
Inventory and appraisement of the personal estate of Russell Smith	20	12
Executors discharged from further accounting with the court	25	16
Letters granted George Selser	25	17
John Lane	26	17
Egbert J. Sessions	27	18
Certificate of clerk of probate	28	18
Testimony of John Lane, one of the executors	29	19
John Lane appointed guardian	30	19
Clerk's certificate	31	19
Record from probate court, produced by plaintiff	31	20
Mortgage of Planters' Bank	34	22
Commercial and Railroad Bank	39	25
Judgment	44	28
Clerk's certificate	45	28
Writ of error	46	28
Citation	47	29
Service of citation	48	29
Bond for prosecuting writ of error	49	29
Assignment of errors	50	30

J. & G. S. GIDEON, printers.

Pleas before the honorable John McKinley, presiding judge of the United States circuit court in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered that, heretofore, to wit, on the 5th day of January, A. D. 1842, the following writ of alias fieri facias issued from the clerk's office of the court aforesaid, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

Whereas, at the November term, 1839, of the circuit court of the United States for said district, Llewllyn Price, jr., for the use of Daniel W. Gantly, recovered judgement against Egbert J. Sessions and Henry Fernandis for the sum of five thousand and ten $\frac{20}{100}$ dollars, with interest thereon at the rate of 8 per centum per annum, from the 11th day of November, A. D. 1839, until paid; together with costs and charges by said plaintiff in and about his said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record: And whereas, on the 27th day of December, A. D. 1839, an execution of fieri facias issued from our said court directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid; which execution was levied on certain property of said defendants; which said property was suffered to remain in possession of said defendants upon executing a forthcoming bond according to law, with John Henderson and John B. Gibson as security; which said bond was returned to our said court at the May term thereof, A. D. 1840, by the marshal aforesaid "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendants to said original execution, for said debt, interest, and costs.

Now, therefore, you are hereby commanded as before, &c., that of the goods and chattels, lands and tenements, of the said E. J. Sessions, H. Fernandis, John Henderson, and John B. Gibson, late of your district, you cause to be made the amount of said judgment, interest, and costs, so recovered as aforesaid; also the sum of forty-two $69\frac{2}{3}$ dollars, including the costs accrued since the emanation of said execution, and that you have the said sums of money before our said circuit court at a term to be held on the first Monday of May next, to render to said plaintiffs; and have also then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Jackson, the first [L. S.] Monday of November, A. D. 1841, and in the 66th year of the independence of the United States.

Issued the 5th day of January, 1842.

N. H. BROWN, *Clk.*

Marshal's return.

"Levied the within execution on the 14th day of February, 1842, on the following property, to wit: land sections 30, 37, and 39, in township 15, range 3 east; also negro slaves Americus, Will, Sam, Dick, Lewis, Little John, Mary, Matilda, Anthony, and Rosana, as the property of E. J. Sessions; and a doubt arising whether the title of said property is in said defendant E. J. Sessions, I required of the plaintiff an indemnifying bond according to the statute, which was executed with Frederick Norcom and Eilbreck Mason, as securities, (see bond enclosed.) Afterwards, on the 22d day of February, 1842, Martha A. Sessions claimed said property as her own individual property, not subject to this execution, and executed bond to try the right of property, with P. W. Defrance, George Richards, and Tobias Stephens as security, (see bond and affidavit endorsed;) thereupon I delivered said property so claimed to said claimant, appraised by me to be of value as follows: sections 30, 37, and 39, in township 15, range 3 east, to be of the value of fourteen thousand five hundred dollars; Americus, five hundred dollars; Will, five hundred dollars; Sam, eight hundred dollars; Dick, eight hundred dollars; Lewis, eight hundred dollars; Little John, four hundred dollars; Mary, seven hundred dollars; Matilda, six hundred dollars; Anthony, eight hundred dollars; and Roseana two hundred dollars.

"ANDERSON MILLER, *Marshal.*
"By W. D. GORDON, *Deputy.*"

"*Claimant's affidavit.*"

STATE OF MISSISSIPPI, *Warren county, ss:*

This day personally appeared before me, John F. Pierson, commissioner for the United States circuit court, southern district of Mississippi, Martha A. Sessions, who being duly sworn deposes and says: that sections 30, 37, and 39, township 15, range three east, (land,) and Americus, Will, Sam, Dick, Lewis, Little John, Mary, Matilda, Anthony, and Rosana, negro slaves; which land and negro slaves have been levied on by virtue of an execution in the hands of the marshall of the southern district of Mississippi, in favor of Llewellin Price, jr., use of Daniel W. Gantley, *an* the property of the said Martha A. Sessions, which she claims as heir-at-law of Russell Smith, deceased.

MARTHA A. SESSIONS.

Sworn to and subscribed before me, this 22d day of February, 1842. JNO. F. PIERSON, *Com'r.*

Claimant's Bond.

Know all men by these presents that we, Martha A. Sessions, George Richards and P. W. De France and Tobias Stephens, are held and firmly bound unto L. Price, jr., for the use of Danl. W. Gantley, in the just and full sum of fifteen thousand and fifty dollars lawful money of the United States, to be paid to the said L. Price, jr., for the use of Danl. W. Gantley, his executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 22d day of February, in the year of our Lord eighteen hundred and forty-two.

The condition of this obligation is such, that whereas, the said L. Price, jr., use of Danl. W. Gantley, has sued out of the circuit court of the United States for the southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements of *on* Egbert J. Sessions, for the sum of five thousand and ten dollars and twenty cents (with a credit thereon endorsed of one thousand three hundred and eighty-five dollars) with interest thereon from the 11th day of November, 1839, at the rate of eight per cent. per annum until paid; and the further sum of forty-two dollars and 69⅜ cents for costs incurred thereon; which said writ issued on the 5th day of January, eighteen hundred and forty-two, and is made returnable to said court on the first Monday of May next, and which said writ is directed to the marshal of the southern district of Mississippi, who hath levied the said writ of the following lands and negroes, to wit: sections 30, 37, and 39, township fifteen, range three east; (negroes,) Americus, Will, Sam, Dick, Lewis, Little John, Mary, Matilda, Henry, and Rosana, as of the property, goods, and chattels, of the said Egbert J. Sessions.

And whereas a certain Martha A. Sessions, of said district, who is a person not named in said execution, hath claimed the said property, and who hath, moreover, made oath of her right and title to said property so levied upon as aforesaid; and the said marshal of said southern district, by reason of the premises, and in consequence of the execution of this bond, hath postponed the sale of said property, so claimed as aforesaid, until the next term of the court from whence said writ of fieri facias issued, and hath delivered the said property to the said Martha A. Sessions, the claimant aforesaid. Now, if the said Martha A. Sessions shall fail to pay the said L. Price, jr. for the use of Daniel W. Gantley, plaintiff in said execution, all damages that shall be assessed against her the said Martha A. Sessions by a jury, in case her claim shall not be sustained, or it shall appear that said claim was made for fraudulent purposes, or for delay; or if said claimant shall not well and truly deliver the said property to the said marshal if the claim of said claimant shall

be determined against said claimant, then the above obligation is to be in full force and effect, otherwise to be null and void.

MARTHA A. SESSIONS, [L. S.]
P. W. DE FRANCE, [L. S.]
GEO. RICHARDS, [L. S.]
TOBIAS STEPHENS. [L. S.]

Witness—WM. BANCKS,
T. W. TOMPKINS.

And the said D. W. Gantley, by attorney, came and says, &c., that the land and slaves levied upon by the marshal under this fi. fa. in the above case, to wit: sections 30, 37, and 39, in township 15, range 3 east, and negroes Americus, Will, Sam, Dick, Lewis, Little John, Mary, Matilda, Anthony, and Rosana, is, and was at the time of the levy, the property of E. J. Sessions, the defendant in the execution aforesaid, and not the property of said Martha, and this he is ready to verify; wherefore, &c.

NORCOM & MASON,
For plaintiff.

And the said claimants comes and says, that the said property levied on as above was not, at the time of the levy of said execution, the property of said Sessions, and that she prays may be inquired of by the country, &c.

PRENTISS, GUION & SMEDES,
For clm't.

And now, at this time, to wit, at a circuit court of the United States, continued and held as aforesaid, on the third day of June, in the year of our Lord one thousand eight hundred and forty-two, being the day and year of first herein written, came the parties aforesaid by their respective attorneys, and a jury being called to try the issue aforesaid between the said parties, came, to wit: A. Stillman, J. Kittrell, H. Keating, Donald McNabb, George H. Ish, E. Newman, G. W. Clark, John C. Kline, R. P. Winslow, Lewis Reno, Edmond Richardson, and John L. McManus, who being empannelled, tried, and sworn the truth to speak upon the issue joined, say, upon their oaths, that the lands, to wit, sections 30, 37, and 39, in township 15, range 3 east, and the negro slaves Americus, Will, Sam, Dick, Lewis, Little John, Mary, Matilda, Anthony, and Rosana, levied on by virtue of the plaintiff's execution herein against E. J. Sessions, and claimed herein by the said Martha A. Sessions, are not subject to satisfy said execution, but are the property of the said Martha A. Sessions, as in pleading above she hath alledged.

Bill of exceptions filed by the plaintiffs.

Be it remembered, that this cause coming on to be tried before the Hon. John McKinley, upon the issue joined between the par-

ties, the plaintiff read to the jury a transcript of the record in the case of the present plaintiff against Egbert J. Sessions and Henry Fernandis; which record is in the words and figures following, to wit:

L. PRICE, JR., use, &c.,
vs.
SAMUEL FERNANDIS et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the seventh day of August, A. D. 1839, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in these words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you without delay to summon Samuel Fernandis, Egbert J. Sessions, and Henry Fernandis, all citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to Llewellyn Price, jr., a citizen of the republic of Texas, (who sues for the use of Daniel W. Gantley, a citizen of the State of New York,) of a plea of trespass on the case to his damage eight thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the 7th day of August,
[L. S.] A. D. 1839, and of the independence of the United States the sixty-fourth.

WM. BURNS, *Clerk.*

Marshal's return.

"4th Sept., 1839, executed this day on E. J. Sessions; and 17th Sept., 1839, on Henry Fernandis; the other defendant not to be found.

WM. M. GWIN, *Marshal.*
By E. H. GREER, *Deputy.*"

And on the said seventh day of August, A. D. 1839, the said plaintiff, by Norcom & Mason, their attorneys, filed their declara-

tion herein against the said defendants, in the following words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:
United States circuit court, ninth judicial district, November term, 1839.

Llewellyn Price, jr., a citizen of the republic of Texas, who sues for the use of Daniel W. Gantley, a citizen of the State of New York, complain of Samuel Fernandis, Egbert J. Sessions, and Henry Fernandis, all of whom are citizens of the State of Mississippi, in custody, &c., of a plea of trespass upon the case upon promises—for that, whereas the said defendants, by the name of Samuel Fernandis, E. J. Sessions, and H. Fernandis, heretofore, to wit, on the 8th day of May, in the year of our Lord one thousand eight hundred and thirty-eight, at Vicksburg, to wit, in the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay, eight months after the first day of May 1838, meaning the year 1838, to the said Price, or order, by the name of L. Price, jr., the sum of two thousand three hundred and forty-five dollars and eleven cents for value received, negotiable and payable at the office Planter's Bank, Vicksburg, Miss.; by means whereof, the said defendants then and there became liable to pay to the said plaintiff, the said sum of money in the said promissory note specified, according to the tenor and effect of said note, and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money, in said note specified, according to the tenor and effect thereof. And afterwards, to wit, on the 8th day of May, in the year 1838, at Vicksburg, to wit, in the district aforesaid, the said defendants, by the name of Samuel Fernandis, E. J. Sessions, and H. Fernandis, made one other promissory note in writing, and then and there delivered it to the said Price, by means whereof, they then and there promised to pay to said Price, or order, by the name of L. Price, jr., twelve months after the 1st day of May, 1838, (meaning the year 1838,) the sum of two thousand four hundred and one dollars and sixteen cents for value received, negotiable and payable at the office Planter's Bank, Vicksburg, Miss.; by means whereof, they became liable to pay said plaintiff the sum of money therein specified, according to the tenor and effect of said note; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there promised to pay the sum according to the tenor and effect of said note. Yet the said defendants, not regarding their said sev-

eral promises and undertakings, have not as yet paid the said plaintiff the said several sums of money, or any or either of them, or any part thereof, (although often requested so to do,) but to pay the same, or any part thereof, to the said plaintiff, the said defendants have hitherto wholly failed and refused, and still do refuse, so to do, to the damage of the said plaintiff of eight thousand dollars, and therefore he brings his suit, &c.

NORCOM & MASON,
Plaintiff's Attorneys.

Afterwards, to wit, at the same November term of the court aforesaid, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and thirty-nine, came the plaintiff aforesaid, by his attorneys aforesaid, and it appearing to the satisfaction of the court, that the writ herein has been duly executed, and the said defendants failing to appear, though solemnly called: Therefore, it is considered by the court, that the said L. Price, jr., who sues for the use of Daniel W. Gantley, plaintiffs, recover against defendants the sum of five thousand and ten dollars and twenty cents for his damage, which he has sustained by reason of the promises, and also their costs and charges by him about his suit in this behalf expended.

And the said defendants in mercy, &c.

The plaintiff then read to the jury the fieri facias, in the words and figures following, to wit: (See fieri facias before copied.)

The plaintiff then read to the jury the levy of the marshal, endorsed on said fieri facias, which is in the words and figures following, to wit: (See marshal's return before copied.)

The plaintiff then read to the jury the statement of N. G. Watts, which is in the words and figures following, to wit:

N. G. Watts makes oath, that the property levied upon by him under the fi. fa. in this case, and set forth in the return, was, at the time of the levy and seizure, on the plantation where the defendant E. J. Sessions and family resides, and which plantation was under cultivation by him; he further makes oath, that the value of the particular property was, and is, what was estimated and set forth in the return in the fi. fa.

N. G. WATTS.

Subscribed and sworn to, before the undersigned, this 23d day of May, A. D. 1842.

R. BARNETT, *J. P.*

We agree the above affidavit shall be read on the trial of the above cause.

F. NORCOM, GUION, PRENTISS & SMEDES, *for Complainants.*

The plaintiff then closed his case for the present. The claimant's counsel then read to the jury the last will and testament of

Russell Smith, deceased, which is in the words and figures following, to wit:

Probate court, July term, 1836.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

1st. page. In the name of *Geo* amen.

I, Russell Smith, of the county of Warren, and State of Mississippi, being in my usual health, and of sound mind and memory, but calling to mind that all men have to die, do hereby make, publish, and declare this to be my last will and testament, hereby revooking all otheis.

1st. My soul I will to God who gave it, with a firm hope of its resurrection at the last day, and my body to be buryed in a Christian like manner between my two dear departed companions in the grave yard on my plantation.

2ndly. I will that all my just debts and funeral expences be paid, and for this purpose, that the force be kept together on my said plantation, Sylvan Vale, and prudently managed until this crop, or the subsequent one, yields a fund to pay the said debts; and should it become necessary for my executors, hereinafter to be named, to borrow any money for the adjustment of the business, they may proceed under the direction of the orphan's court to negotiate with some bank for a loan, which shall be binding on my said estate, under such order.

3rdly. I give and bequeath unto my dear beloved step-son William D. Griffin, the following described real and personal estate, to wit: All that quarter section of land patented to William Whitefield, assignee of William Lewis, and by the said William Whitefield sold and conveyed to Francis Hartley, and by the said Francis Hartley sold and conveyed to Mark Anderson, and by the said Mark Anderson sold and convey[ed] to me; also one other quarter section adjoining the aforesaid quarter on the west, entered in the name of John G. Jones, and by the said Jones sold and conveyed to me; also the quarter section on which my dwelling stands, half of which was confirmed to the representatives of John Hyland, and by them sold to me—the other half entered in my own name. Also one other quarter adjoining the last mentioned one on the north, entered by Nathaniel Hoggett, and by him sold and conveyed to me, containing, by computation, six hundred and forty acres. Also the following slaves: Bob Foster, his wife Harrite, and their five children, Mary Ann, Eli, Celia, Cinthia, and Charles; Delsey, the wife of Isaac, a boy, the property of the said William D. Griffin; Israel and his wife Matilda, and their child; Lucinda, the wife of Edmond; which property is to be delivered to the said William D. Griffin, by my executors, when he shall arive at the age of twenty-one years; and should he, the said William D. Griffin, die before he arives at the age of twenty-one years, then, and in that event,

the aforesaid property, real and personal, is to be equally divided between my dear beloved brothers-in-law, E. J. Sessions, P. W. Defrance, W. Le Defrance, and Charles A. Defrance, provided they be living, if not, then it is to revert to my estate again, to be disposed of as hereinafter provided.

4thly. I give and bequeath unto my dear beloved daughter Martha Ann Smith, all the remaining ballance of my estate, real and personal, not mentioned in my bequest to William D. Griffin, and should he and the others beforementioned, to whom the said legacy was to descend, all be dead, she is also to inherit it, the said legacy to W. D. Griffin; but at all events the property is to be kept together, and the force worked on the plantation until my said daughter Martha Ann arives at the *age of eighteen* years, at which time my executors are to deliver over to her all of the property first set apart for her, and still retain the possession of the legacy to W. D. Griffin, and not deliver it to her, if he lives until he is twenty-one years of age, and if he dies, the mode is pointed out for them to pursue; further, all the proceeds of the crops, from time to [time,] are to be laid out in likely young slaves: Provided, however, in no case are my executors to give more than two thousand dollars a pair for likely young mén and women, except for mechanics. But should my said daughter Martha Ann die before she arives at the age of eighteen, or has an heir of her own body, then the legacy left her, as also that may descend to her from the first legacy, (to W. D. Griffin,) is to be disposed of as follows, (to wit,) my slaves are to be fitted out with three new suits of clothes, one year's provisions, and one hundred dollars in cash, to be delivered to them after the vessel *in* ready to sail from New Orleans for Liberia, where they are to go and enjoy perfect liberty: Provided the colonization society will take charge of them, and they wish to go. But should they *they* refuse to go, my executors are to allow them to select any person they wish as a master or masters, and then to such master or masters, for such sum as five disinterested persons, appointed by the orphans' court, will say they are worth. My said executors are at all events, after the deaths contemplated as under this will, the times arives to tender my people their freedom, to sell to the highest bidder all my real estate, on one to six years credit, equal *annual* instalments, by taking from the purchaser or purchasers notes payable and negotiable in some good bank, with endorser and a mortgage on the property sold, with a specific understanding, that if the money is not punctually paid as it falls due, they are to pay ten per cent. interest from the date of the sale, and as fast as the money arises from said sale shall be collected, it shall be vested in some good bank stock under the direction of the orphan's court of this county, only the dividend to be expended in any way; and if the slaves should be sold, the proceeds of the sale to be vested in like manner, and the stock stand for the dividend to be applied as follows, (to wit,) five thousand, or the dividend on that amount

to be given annually, or semi-annually to Malinda Gilleck, an orphan girl, and cousin to me; also fifteen thousand dollars of stock to the contemplated Warren County Academy, at Oak Ridge; also fifteen thousand dollars of stock to the direction of the quarterly meeting conference of Warren county, to be laid out to the best advantage in educating the poor children of this county; and the whole of the ballance of the stock or estate in any way, to be equally divided between the Mississippi Methodist annual conference and the Methodist book concern at New York, but no part of the principal is to be used whereby it will be diminished, but the dividends may be expended by them in any way they may direct.

5thly. I will, that in order that this my last will and testament be faithfully executed, I do hereby constitue and appoint my dear beloved brothers-in-law E. J. Sessions and P. W. Defrance, and my trusty friends and confidants John Lane and George Selser, executors to this my last will and testament, hereby enjoining on them the observance of the strict letter of it, inasmuch as I do here strenuously desire to impress on my said executors, as well as the orphans' court, the great aversion I have to any of my own sisters, or their husbands, or any of their descendants, my brother Hiram, his wife, or any of his descendants, having any thing to do in the management of my dear daughter, or any part of my estate; and I therefore direct, that in the event of the death or refusal to act of my said executors, that the orphans' court do prudently select some individual to take the management of the same, not to be in any way related to me by consanguinity, except it be my dear beloved daughter, or her descendants, provided she be of age.

6thly. I will the guardianship of my said daughter Martha Ann to my said trusty friend John Lane, with privilege, annually, to call on my said executors, or if he be acting himself, for a sufficient sum of money to support and educate her, he directing her education to be a classic one. And in the event of the death of the said John Lane, or his refusal to act, the court in appointing a guardian are to be governed by the clause first above, directing the manner of selecting an administrator, so that none of my relations have any thing to do with my estate or child in the remotest degree.

R. SMITH, [L. S.]

Attest: HENRY FERNANDIS.
Attest: TOBIAS STEPHENS.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Ellridge G. Walker, clerk of the probate court of said county, do hereby certify, that the foregoing instrument of writing is a true copy from the original on file in my office.

[L. S.] Given under my hand and seal of office, at Vicksburg this 27th day of July, 1836.

Teste:

E. G. WALKER, *Clerk.*
By CHAS. SHELDON, *D. C.*

The claimant then proved that said claimant is the daughter of said Russell Smith, and the same person described in the will as Martha A. Smith; that Russell Smith died in June, 1836; that the property levied on is the same devised and bequeathed to the claimant under said will. The claimant then introduced the record of the probate court of Warren county, in words and figures following, to wit:

Be it remembered, that on Monday, the 25th day of July, being the fourth Monday in said month, a probate court, for the county of Warren, was commenced and held at the court-house thereof, in the city of Vicksburg.

Present: William Mills, esq., judge; E. G. Walker, clerk; E. W. Morris, sheriff.

Among the record and proceedings of said court are the following, to wit:

A writing purporting to be the last will and testament of Russell Smith, deceased, was produced in open court, and proved according to law, by the oath of Henry Fernandis, a subscribing witness thereto, and admitted to probate; whereupon, on motion of Egbert J. Sessions, John Lane, and George Salser, three of the executors therein named, letters testamentary were granted them on their entering into three several bonds, with security in the penalty of one hundred thousand dollars each, and therefore they qualified according *according* to law; and, on motion of said executors, it is ordered, that Thomas J. Gwin, Joseph Templeton, Jesse Evans, Alex. McNeill, and Joel Hullum, be appointed appraisers of said estate.

Afterwards, to wit, at the August term of said *cort*, on the following, to wit, an inv*a*ntory and appraisment of the estate of Russell Smith, deceased, was returned into court, which was examined, allowed, and ordered to record; which said inventory and appraisment refered to, is in the words and figures following, to wit:

THE STATE OF MISSISSIPPI, *Warren county, ss:*

We, Alexander McNeil, Joseph Templeton, and Jesser Evans, Joel Hullum, do swear, that we will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of Russell Smith, deceased, so far as the same shall come to our sight and knowledge, and will, in all respects, perform our duty as appraisers, to the best of our skill and knowledge, so help us God.

JOS. TEMPLETON,
JESSER EVANS,
ALEX. McNEILL,
JOEL HULLUM.

Sworn to and subscribed before me, this 22d day of August, 1836.
JAS. N. BITNER, *J. P.*

In obedience to the annexed order, the undersigned have [made] out the invantory and appraisment of the personal estate of Russell Smith, deceased, as shown to us by the executors, (to wit:)

1 set, 7 vols., Rev. John Westley's works -	$14 00	
1 set *Malt Burn's* Geography - -	24 00	
1 set Rollins' Ancient History - -	8 00	
1 vol. Westley's Notes on the Bible - -	2 00	
1 set Clark's Comentaries on the Bible -	18 00	
1 vol. Dick's Philosophy *or* Religion -	1 00	
1 do do of Future State -	1 00	
1 set Paley's Works - - - -	1 00	
1 vol. Hind's Farrier - - - -	0 50	
1 lot sundry miscellaneous works - -	15 00	
		$84 50
1 secetary and book case - - -	75 00	
1 sofa - - - - -	75 00	
1 rocking chair - - - -	15 00	
1½ doz. rush bottomed chairs, 20 - -	30 00	
1 *bewrau* and book case - - -	30 00	
1 side board - - - - -	50 00	
1 set match tables - - - -	20 00	
2 dining tables, *a* $7 - - -	14 00	
1 gilt mantle glass - - - -	18 00	
1 set brass *h*andirons, fender, shovel, & tong*ues*	30 00	
1 do do do do	25 00	
1 lot glass ware and castor - - -	20 00	
		402 00
1 set flower pots - - - -	3 00	
1 pr. brass candlesticks and glass lamps -	2 00	
6 tea boards - - - - -	4 00	
1 set dining and dessert knives and forks -	10 00	
1 candle stand - - - -	2 00	
1 set crockery ware and 3 glass jars - -	12 00	
1 Mitchel's Map, with book of reference -	15 00	
1 8-day clock - - - -	50 00	
1 lot kitchen furniture, castors, &c. - -	30 00	
2 large carpets, *a* $50 each - - -	100 00	
2 hearth rugs, *a* $5 each - - -	10 00	
1 Spanish saddle and bridle - - -	20 00	
1 small dressing table - - -	2 50	
2 wash stands, at $3 each - - -	6 00	
		266 50
1 lot bed clothing, consisting of quilts, blankets, sheets, pillows, towels, counterpains, &c. - - - - -	100 00	
2 bedsteads, beds, and furniture, *a* $50 each -	200 00	
1 bedstead and feather bed - - -	20 00	
		320 00
		1,073 00

1 box Muscat wine	7 00	
1 rifle gun	15 00	
1 double barrel shot gun	30 00	
1 pr. pistols	5 00	
1 ewer and bason, and 2 pitchers	3 00	
1 pr. saddle bags	3 00	
		63 00

Stock.

120 head of cattle, *a* $7	840 00	
8 yoke work cattle, *a* $60	480 00	
46 head of sheep, *a* $3	138 00	
3 sorrel horses, *a* $40 each	120 00	
1 white horse	75 00	
1 dunn filley	40 00	
1 gray mare	50 00	
1 sorrel mare and colt	75 00	
1 sorrel mare	100 00	
		1,918 00
1 brown mare	40 00	
1 bay mare	50 00	
1 dunn horse	100 00	
1 bay horse	100 00	
1 sorrel horse	60 00	
1 old sorrel horse	45 00	
1 sorrel horse	80 00	
1 sorrel mare	50 00	
1 gray horse	100 00	
1 old iron gray horse	50 00	
1 bay horse	100 00	
1 old bald horse	50 00	
		825 00
1 sorrel poney	70 00	
1 bay horse	75 00	
1 black horse	40 00	
1 old horse (Sam)	40 00	
1 bay mare and colt	100 00	
1 roan poney	30 00	
14 sets plough harness, $2 each	28 00	
1 old clock	15 00	
1 medical chest and medicines	25 00	
		423 00
1 old cupboard	5 00	
20 ploughs, *a* $3 each	60 00	
4 harrows, *a* $1 each	4 00	
1 dray	40 00	
1 wagon $160, 1 do. $120	280 00	
1 cart $20, 12 cane hoes, *a* $1, $12	32 00	
10 weeding hoes $5, 15 chopping axes $15	20 00	

2 chests of carpenter's tools, *a* $60 - -		120 00	
			561 00
			4,863 00
1 X saw $3, 4 spades $3 - - -		6 00	
1 lot of log and coupling chains - -		8 00	
1 pr. patent balances - - -		10 00	
1 pair stalyard, $2 50, 1 lot blacksmith's tools $20 - - - - -		22 50	
			46 50
Slaves.			
Dinah and her infant - -	$950	Family 1	1,100 00
Martha - - -	150		
Alcey and her child Rachel -	-	- -	200 00
Sally and her infant - -	$1,000	Do. -	1,200 00
Jerry, her son - -	200		
Moses, and Polly his wife -	-	- -	3,000 00
Reuben - - - -		$1,300 00	
Augustus - - - -		1,200 00	
			2,500 00
Allen - - -	$1,200		
Martha - - -	600		
Mary - - -	600	Family -	3,350 00
Clinton - - -	550		
John - - -	400		
Lewis - - -	1,300	Do. -	2,250 00
Matilda and infant - -	950		
Jupiter - - -	800	Do. -	1,200 00
Henry - - -	400		
Rob. Porter - - -	1,000		
Harriet and infant - -	800		
Marquann - - -	800		
Eli - - -	500	Do. -	3,750 00
Celia - - -	300		
Cynthia - - -	200		
Charles - - -	150		
Zacharich - - -	-	- -	1,000 00
Ampey - - -	1,200	-	2,150 00
Manerva - - -	950		
Miles - - -	1,300		
Mariah and infant - -	1,000	Do. -	2,700 00
Offel - - -	400		
America - - -	1,000		
Rosana and infant - -	800	Do. -	2,600 00
Will - - -	600		
Sarah - - -	200		
Henry Clay - - - -		$1,200 00	
Nelly - - - -		300 00	
			$1,500 00

Bob (old man)	$600		
Lucy	800	Family	2,450 00
Hall	800		
Ben	250		
			35,859 50
Isreal		800 00	
Matilda and infant		900 00	
			1,700 00
Mary		800 00	
Delsey		900 00	
Mary		600 00	
			2,300 00
John	1,200		
Harriet	800		2,000 00
Sam		1,300 00	
Anthony		1,300 00	
Daniel		1,300 00	
Robert		1,000 00	
Lucinda		900 00	
Daphny		800 00	
			6,600 00
Bill	500		
Hannal	400		
Anderson	500		2,000 00
Hanna	400		
Louisa	200		
	Amount		$50,459 50

Given under our hands, this 22d day of August, 1836.

JOS. TEMPLETON, [SEAL.]
JOEL HULLUM, [SEAL.]
JESSER EVANS, [SEAL.]
ALEX. McNEILL, [SEAL.]

Afterwards, to wit, at the November term, 1840, of said court are the following, to wit, the executors of Russell Smith, deceased, having advertised, according to law, for final settlement and allowance of their accounts as executors aforesaid, this day presented said account, which was received, examined, allowed, and ordered to be recorded; and, on their motion, it is ordered, that they be discharged from further accounting with this court, unless hereafter cited by parties interested.

Letters granted to George Selser.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

By the probate court of said county, to George Selser and Stephen Howard, greeting:

Whereas Russell Smith, late of said county, dec'd, had, whilst he lived, [and] at the time of his death, divers goods, rights, and credits within the county and State aforesaid, and did make and publish his last will and testament, and thereby constituted and appointed the said George Selser executor thereof; and whereas, also, the said last will and testament has this day been admitted to probate in our said court, and the said George Selser has taken the oath, and given bond as required by law; we do therefore grant unto the said George Selser, these our letters testamentary, authorizing and empowering him to make an inventory of the estate of said testator, cause the same to be appraised, and make return of said inventory and appraisment into our said [court,] as by law required, to pay first the debts of said testator, and then the legacies contained in said will, so far as his goods, chattels, and credits will extend; and the law shall charge you to execute and perform the said last will and testament, according to the true intent and meaning thereof; and lastly, to render a just and true account of his actings and doings herein, when thereto required by this court.

Witness William Mills, judge of probate of the county of Warren, the fourth Monday of July, in the year of our Lord one thousand eight hundred and thirty-six. Issued the day of July, 1836.

By E. G. WALKER, *Clerk.*
C. SHELDON, *D. C.*

Letters granted to John Lane.

STATE OF MISSISSIPPI, *Warren county, ss:*

By the probate court of said county, to John Lane and William Vick, greeting:

Whereas Russell Smith, late of said county, deceased, *hal* whilst he lived, at the time of his death, divers goods, rights, and credits, within the county and State aforesaid, and did make and publish his last will and testament, and thereby constituted and appointed the said John Lane executor thereof: And whereas, also, the said last will and testament has this day been admitted to probate in our said court, and the said John Lane has taken the oath and given bond as required by law, we do therefore hereby grant unto the said John Lane these our letters testamentary, authorising and empowering him to make an inventory of the estate of said testator, cause the same to be appraised, and make return of said inventory and appraisment into our said court as by law required; to pay, first the debt of said testator, and then the legacies contained in the said will, so far as his goods, chattels, and credits will extend,

and the law shall charge you to execute and perform the said last will and testament, according to the true intent and meaning thereof; and, lastly, to render a just and true account of his actings and doings herein when thereto required by this said court.

Witness William Mills, judge of probate of the county of Warren, the fourth Monday of July, in the year of our Lord one thousand eight hundred and thirty-six.

Issued the 26th day of July, 1836.

Teste: E. G. WALKER, *Clerk.*
By CHAS. SHELDON, *D. C.*

Letters granted to Egbert J. Sessions.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

By the probate court of said county, to Egbert J. Sessions and James Glass, greeting:

Whereas Russell Smith, late of said county, deceased, had, whilst he lived, at the time of his death, divers goods, rights, and credits, within the county and State aforesaid, and did make and publish his last will and testament, and thereby constituted and appointed the said Egbert J. Sessions executors thereof: And whereas *als* the said last will and testament has this day been admitted to probate in our said court, and the said Egbert J. Sessions *and* has taken the oath and given bond as required by law, we do therefore hereby grant unto the said Egbert J. Sessions these our letters testamentary, authorising and empowering him to make an inventory of the estate of said testator, cause the same to be appraised, and make return of said inventory and appraisment into our said court as by law required; to pay first the debts of said testator, and then the legacies contained in his said will, so far as his goods, chattels, and credits will extend, and the law shall; to execute and perform the said last will and testament, according to the true intent and meaning thereof; and, lastly, to render a just and true account of his actings and doings herein when thereto required by this court.

Witness William Mills, judge of probate of the county of Warren, the fourth Monday of July, in the year of our Lord one thousand eight hundred [and] thirty-six.

Issued the — day of July, 1836.

Teste: E. G. WALKER, *Clerk.*
By C. S., *D. C.*

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing orders of court, to wit, admitting to probate the last will and testament of Russell Smith, deceased, and the granting of letters testamentary, and the inventory and appraisment, and the order receiving final account of executors; also copy of the letters testamentary, issued to George Selser, John Lane, and Egbert J. Sessions, have all been correctly copied from the records in my office.

Given under my hand and seal of office, this 15th day of Feb-
[L. S.] ruary, A. D. 1842.

A. H. ROWLETT, *Clk.*

The claimant then introduced John Lane, one of the executors, whose competency was objected to by the plaintiff, [but] was permitted to testify by the court. Said witness testified that Egbert J. Sessions, one of the defendants in the above named fieri facias, had acted as executor from the time he qualified as such, in conjunction with the two other executors; that Egbert J. Sessions had taken charge of the plantation and slaves as executor, and had since had the actual control and management thereof; that the possession of Sessions was joint with the other executors, and the control of the slaves was given to him by the other executors as a matter of convenience, as he, Sessions, lived on the adjoining plantation. The witness further testified, that the estate of Russell Smith was unsettled, and that there are now outstanding debts against the estate of Russell Smith unpaid, amounting to upwards of twenty thousand dollars. Witness further testified that the accounts of the affairs of the estate had been kept and rendered mostly by Egbert J. Sessions, the witness Lane having made but two annual settlements. Witness stated that he had rendered accounts as guardian of claimant, Martha A. Sessions. Witness further stated that he considered Egbert J. Sessions in the possession of the property in the capacity of executor of Russell Smith; that the claimant and Egbert J. Sessions had intermarried in 1838; that said Sessions was now in the possession of the property since the marriage; that no formal act of delivery of the property to E. J. Sessions by the executors had taken place since the marriage of the claimant with said Sessions. The defendant then read the record of the probate court of Warren county, appointing John Lane guardian of claimant; which is in the words and figures following, to wit:

Be it remembered that, on Monday, the 25th day of July, being the fourth Monday in said month, a probate court for the county of Warren was commenced and held at the court house thereof, in the city of Vicksburg—present William Mills, esq., judge, E. W. Morris, sheriff, E. G. Walker, clerk.

Among the record and proceedings of said court are the following, to wit:

On application of John Lane, it is ordered by the court that he be confirmed guardian of Martha Ann Smith, a minor heir of Russell Smith, deceased, his executing bond in the penal sum of fifteen thousand dollars, with William Vick his security; whereupon he entered into bond, and took the oath prescribed by law, and letters issued accordingly.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county,

do hereby certify, that the foregoing order, appointing John Lane guardian of Martha Ann Smith, has been correctly copied from the records of my office.

Given under my hand and seal of office, this 15th day of Febru-
[L. s.] ary, A. D. 1842.

A. H. ROWLETT, *Clk.*

After the reading of said record the claimant closed her case. The plaintiff then proved that the claimant was now about 20 years of age. He then read to the jury a record of the probate court of Warren county, in the words and figures following, to wit:

Be it remembered that, on Monday, the 23rd day of November, 1840, that being the fourth Monday of said month, a probate court was commenced and held in and for the county of Warren, in the State of Mississippi, at the court house of said county, in the city of Vicksburg.

Present: the Hon. B. Springer, judge; E. W. Morris, sheriff; H. M. Jenkins, clerk.

Among the records of proceedings of said court, (it being) Thursday, the 26th day of said month, and the 4th day of said term, are the following, to wit:

The executors of Russell Smith, deceased, having advertised according to law for final settlement and allowance of their accounts as ex'tors aforesaid, this day presented said account; which was received, examined, and allowed, and ordered to be recorded. And, on their motion, it is ordered that they be discharged from further accounting with this court, unless hereafter cited by parties interested; which said final account is in the words and figures following, to wit:

DR. *Estate of Russell Smith, dec'd, in account current, and for final settlement and allowance, with Egbert J. Sessions, ex'or.*

Voucher 1	P'd Briggs, Lacast & Co. (by renewal in part) -	$12,626 12		
2	P'd Bank of Vicksburg -	2,504 60		
3	" N. & J. Dick & Co. -	211 83		
4	" Brabston & Jones - -	16 07		
5	" Roner Asher & Co. -	61 31		
			15,419	93
7	" Kipp & Seymore - -	20 00		
8	" Templeton, Payne & Co. -	169 39		
9	" G. W. McElrath - -	105 00		
10	" James Magee - -	122 00		
11	" Templeton, Payne & Co. -	316 53		
12	" Burke, Watts & Co. -	670 00		
13	" Mississippi Union B'k, (renewal in part) - -	1,539 99		
			2,942	91
14	" N. & J. Dick & Co. -	1,360 07		

15	P'd J. B. & S. S. Fox - -	3 50		
16	" J. C. Bull & Co. - -	120 29		
17	" Valentines - -	122 57		
18	" J. Templeton & Co. -	394 51		
19	" Grenwold & Popes -	225 00		
20	" Thos. Marshall - -	131 00		
21	" D. D. Gibson - -	80 00		
				1,212 93
22	" Planter's Bank, (renewal)	205 90		
23	" Hiram Smith - -	500 00		
24	" Randolph & George -	165 87		
25	" Kipp & Seymore - -	12 00		
26	" Execution - - -	883 05		
27	" Harrison Swiney & Co. -	601 37		
28	" Sims & Reading - -	28 00		
29	" C. Hudson - - -	9 00		
				4,258 29
30	" Chas. Hinton - -	13 00		
31	" F. L. Webb - -	170 00		
32	" William Hay - -	422 36		
33	" B. W. & Co. - -	160 08		
				665 44
34	" Commercial & Railroad B'k, (by renewal in part) -	14,527 40		
35	" Ely & Higinglottle -	68 12		
36	" Valentines - -	100 00		
37	" Steele, Jenkins & Co. -	47 18		
38	" J. Henderson & Co. -	103 50		
				14,846 20
				$39,345 70

Cr.

Voucher 1	By proceeds 12 bales cotton -	$363 38		
2	" do. 69 do. do. -	2,267 64		
3	" do. 50 do. do. -	2,463 20		
	" amount forward - -	5,094 22		
	To amount forward - -	-		39,345 70

Cr.

Voucher 4	" proceeds 30 bales cotton -	678 71	
6	" do. 97 do. do. -	4,216 58	
5	" my note to East - -	558 12	
7	" 20 bales cotton - -	494 81	
8	" 20 do. do. - -	564 04	
9	" 26 do. do. - -	607 31	
10	" 24 do. do. - -	739 47	

11 " 12 do. do. - - 275 02

To am't due me in settlement of
J. Lane - - - 417 84 13,636 12

Settled by me, as above, as one of the executors of Russell Smith.
E. J. SESSIONS.

Nov. 26, 1840.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that foregoing order of court, receiving the final account of the executor of the last will and testament of Russell Smith, deceased, together with said final account, have been correctly copied from the records of my office.

Given under my hand, and seal of office, this 30th day of May, [L. S.] A. D. 1842.

A. H. ROWLETT, *Clk.*

The plaintiff also read to the jury the mortgage of the Planter's Bank, in the words and figures following, to wit:

This indenture, made and entered into this twenty-first day of January, in the year of our Lord one thousand eight hundred and forty, between Egbert J. Sessions and Martha A. Sessions his wife, of the county of Warren, and State of Mississippi, of the first part, and the President, Directors, and Company, of the Planter's Bank of the State of Mississippi, of the second part, witness, that the said Egbert J. Sessions and Martha A. Sessions his wife, for and in consideration of the sum of ten dollars to them in hand paid by the said parties of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for the further consideration hereinafter expressed, have this day given, granted, bargained, and sold, and do by these presents give, grant, bargain, and sell, to the said President, Directors, and Company of the Planter's Bank of the State of Mississippi, their successors in office, and assigns, the following tracts or parcels of land, being and lying in the county of Warren, and State of Mississippi, and known and designated on the plat of the surveys of the United States as fractional section number twenty-eight, of township number fifteen, of range three east, containing three hundred and four acres, being the same land patented to Nathaniel Hoggett on the fourth day of September, eighteen hundred and thirty-four, together with all the appurtenances to the above described land belonging and appertaining; to have and to hold the above described land and premises to the said parties of the second part, their successors in office, and assigns, in fee simple, for ever. Also the following negro slaves for life, to wit, Americus, aged about thirty years; Will, aged about thirteen years; Littleton, aged about nine years; Lewis, aged about twenty-eight

years; Dick, aged about twenty years; Sam, aged about eighteen years; Anthony, aged about twenty years; Rosana, aged about thirty years; Matilda, aged about twenty-four, and Mary, aged about fourteen; and the said parties of the first part, for themselves, their heirs, executors, and administrators, hereby covenant and agree, to and with the said parties of the second part, their successors in office, and assigns, that they will, and their heirs, executors, and administrators shall, forever warrant and defend the title to the above conveyed land and premises, and to the said slaves, against the claime or claims of all persons whomsoever, both at law and equity.

Now, the condition of the foregoing conveyance is such, that whereas the said Egbert J. Sessions is justly indebted to the said parties of the second part, in the sum of seven thousand one hundred and twenty-one dollars and twenty cents, as evidenced by his promissory note for the said sum of seven thousand one hundred and twenty-one dollars and twenty cents, bearing even date with these presents, to wit: on the twenty-first day of January, in the year of our Lord eighteen hundred and forty, and payable twelve months after date to the said parties of the second part at their office at Vicksburg. Now, should the said Egbert J. Sessions well and truly pay to the said parties of the second part, as aforesaid, or their successors, and assigns, on the twenty-first day of January, in the year eighteen hundred and forty-one, the one-fourth part of said sum of seven thousand one hundred and twenty-one dollars and twenty cents, to wit: the sum of one thousand seven hundred and eighty dollars and thirty cents, together with the interest for twelve months on the balance then due; and on the twenty-first day of January, in the year eighteen hundred and forty-two, shall pay, as aforesaid, to the said parties of the second part, their successors in office, or assigns, the like sum of one thousand seven hundred and eighty dollars and thirty cents, being the one-fourth part of said first named sum of seven thousand one hundred and twenty-one dollars and twenty cents, together with the interest for twelve months on the balance then due; and so shall continue to pay, on the twenty-first day of January in each and every year, the one-fourth part of the said original sum, as aforesaid, with the interest for twelve months on the balance then due, until, by four annual payments, the whole sum shall be liquidated and discharged; then this conveyance to be null and void, otherwise to remain in full force and virtue. It is covenanted and agreed further, that said Egbert J. Sessions shall retain the possession of said property by this deed conveyed, and receive, and appropriate to his own uses, the profits, rents, and issues arising therefrom, until required to foreclose this mortgage for default in some one of the payments aforesaid, or the whole thereof.

In testimony whereof, the parties of the first part have hereunto set their hands and seals; and the said parties of the second part,

by the hand of William Vick, president of their office at Vicksburg, and the seal of the said bank at Vicksburg, Mississippi, in the day and year aforesaid. The words "default in" were interlined before the signing, sealing, and delivery of these presents, tenth line, 2d page.

E. J. SESSIONS, [L. S.]
MARTHA A. SESSIONS, [L. S.]
[L. S.] WM. VICK, (*President.*) [L. S.]

STATE OF MISSISSIPPI, *Warren county:*

This day, before me, John Crawford, a justice of the peace in and for said county, came Egbert J. Sessions and Martha A. Sessions his wife, who severally acknowledged that they had signed, sealed and delivered the foregoing deed as their act and deed, and for the purposes therein set forth, and the day and the year therein mentioned. And the said Martha A. Sessions being by me examined, separate and apart from her husband, privately acknowledged that she had freely and voluntarily sign'd, sealed and delivered the same on the day therein named, without any threat, fear, or compulsion on the part of her said husband.

Given under my hand and seal of office, this fourth day of February, 1840.

JOHN CRAWFORD, *J. P.* [L. S.]

STATE OF MISSISSIPPI, *Warren county, ss:*

Personally appeared before me, John F. Pierson, a justice of the peace for the county aforesaid, William Vick, president named in the foregoing deed, who acknowledged that he had signed, sealed and delivered the foregoing deed, on the day and year therein mentioned, as his act and deed.

Given under my hand and seal, this 5th day of February, 1840.

JOHN F. PIERSON, *J. P.* [L. S.]

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Harvey M. Jenkins, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificates were filed for record in my office, on the 10th of February, 1840; whereupon, I have made the same of record in book O, pages 339 and 340.

[L. S.] Given under my hand and seal of office, this 25th day of April, 1840.

H. M. JENKINS, *Cl'k.*

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certi*fied* that the foregoing deed and certificates have been correctly copied from book O, pages 339 and 340, of the record of deeds in my office.

[L. S.] Given under my hand and seal of office, this 1st day of June, A. D. 1842.

A. H. ROWLETT, *Cl'k.*

He also read to the jury a mortgage in the words following, to wit:

STATE OF MISSISSIPPI, *Warren county:*

This indenture, made and entered into this sixteenth day of January, eighteen hundred and forty, between Egbert J. Sessions and Martha A. Sessions his wife, of the first part, and the President, Directors and Company of the Commercial and Railroad Bank of Vicksburg, of the second part, witnesseth: That, for and in consideration of the sum of ten dollars by the party of the second part paid to Egbert J. and Martha A. Sessions, the receipt of which is hereby acknowledged, and for the further consideration hereinafter named, the said party of the first part hath bargained, sold and conveyed, unto the parties of the second part, the following real and personal property, lying and being within the county and State aforesaid, to wit: all that certain tract or parcel of land known as fractional section thirty-seven, in township number fifteen, of range number three east, containing five hundred and twenty-five acres and ninety-nine hundredths of an acre; also, the following described negro slaves, to wit: Allen, Alsey, Mary, Martha, Clementina, John, Rachel, Zachariah, Sally, Perry, McDowell, Ampy, Jupiter, Lucy, Hal, and Ben; and to hold unto the said parties of the second part, and to their successors in office, and their assigns forever. And the said Egbert J. and Martha A. Sessions hereby covenant and agree to and with the parties of the second part that they will, and their heirs forever shall, defend the title to the above land and negroes in fee simple against the claims of all persons whomsoever. Now the condition of the above conveyance is such, that, whereas the said Egbert J. Sessions is justly indebted to the parties of the second part in the sum of twenty-one thousand six hundred and sixty-one dollars and nineteen cents, as evidenced by his promissory note, bearing even date with these presents, payable twelve months after date thereof, now if the said Egbert J. Sessions shall well and truly pay to said parties of the second part the aforesaid sum of twenty-one thousand six hundred and sixty-one dollars and nineteen cents, on the seventeenth day of January, eighteen hundred and forty-one, then this conveyance to be null and void, otherwise to remain in full force and virtue. And it is further covenant[ed] and agreed, by the parties hereto, that, if the said sessions shall well and truly pay, on the seventeenth day of January, 1841, the full sum of four thousand three hundred and thirty-three dollars and twenty-four cents to the parties of the second part, and shall, in like manner, that is, on the seventeenth day of January, 1842, 1843, 1844, and 1845, of each and every year, pay the further sum of four thousand three hundred and thirty-three dollars and twenty-four cents, together with all legal interest accrueing thereon, which said several sums make, in the aggregate, the amount of note as above specified, then the

said parties of the second part agree therewith to be content and satisfied; and it is further understood, that the parties of the second part are not to proceed at law on said notes, or forclose this mortgage, unless default be made by him, the said Egbert J. Sessions, in some one of the payments aforesaid. It is further understood by the parties hereto, that the said Egbert J. Sessions shall retain the possession of the above mentioned land and negroes, and appropriate to his own use the rents and profits arising therefrom, until default be made in the payment of some one of the instalments thereof.

In testimony whereof, the said parties have hereunto set their hands and affixed their seals, at Vicksburg, the day and date aforesaid; and the said parties of the second part, by the hand and seal of W. H. Benton, their president.

E. J. SESSIONS, [SEAL.]
MARTHA A. SESSIONS, [SEAL.]
W. H. BENTON, *Pres't*, [SEAL.]

STATE OF MISSISSIPPI, *Warren county:*

This day, before me, John Crawford, a justice of the peace in and for said county and State, came in person Egbert J. Sessions and Martha A. Sessions his wife, who severally acknowledged that they had signed, sealed, and delivered the foregoing deed, on the day and year therein stated, as their act and deed; and the said Martha A., wife of said E. J. Sessions, having been by me privately examined, separate and apart from her said husband, acknowledged that *that* she voluntarily had signed, sealed, and delivered the same as her act and deed, freely and without the threats, fear, or compulsion of her said husband.

Given under my hand and seal, this 17th day of January, 1840.

JOHN CRAWFORD, *J. P.*, [SEAL.]

STATE OF MISSISSIPPI, *Warren county:*

Personally appeared before the undersigned justice of the peace, in and for said county, W. H. Benton, who acknowledged that he signed, sealed, and delivered the within deed, on the day and year therein written, *h*as his act and deed.

Given under my hand and seal, this 17th day of January, 1840.

EDWD. R. WARREN, *J. P.*, [SEAL]

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Harvey M. Jenkins, clerk of the probate court of said county, hereby certify, that the foregoing deed and certificate were filed for record in my office on the 17th of January, 1840, whereupon I have made the same of record in book O, pages 257 and 258.

[L. S.] Given under my hand and seal of office, this 28th day of March, 1840.

H. M. JENKINS, *Clerk.*

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby [certify] that the foregoing mortgage and certificates have been correctly copied from book O, pages 257 and 258, of the records of deeds in my office.

[L. S.] Given under my hand and seal of office, this 31st day of May, A. D. 1842.

A. H. ROWLETT, *Clerk.*

The plaintiff proved that claimant was now about 20 years of age, and was 16 years of age at the time of her marriage with said Egbert J. Sessions, which was in September, 1838.

The plaintiff proved by John Lane, that he assented to the execution of the two mortgages above named, by Sessions and wife, the present claimant.

The claimant then proved, that the debts enumerated in said mortgage before refered to, was, as she believed, in renewal of debts contracted with the bank by Russell Smith, in his lifetime, the claimant's father.

Said John Lane further proved, that he was a director in one of the banks to which said mortgages are made; that he had assisted Sessions in makeing the arangement with the bank, and also assented that he, Sessions, and claimant should mortgage the property to the banks.

This was all the proof in the cause; and, thereupon, the court instructed the jury, "that the property devised and bequeathed by the will of Russell Smith to the claimant, Martha A., did not vest in her, nor was she entitled to the possession of it until she, the claimant, arived at the age of 18 years; and altho' she married the defendant in the execution before that time, the title of the property could not be vested in him, until the claimant attained 18 years of age, at which time, under the will, she became entitled to the possession of it; that the property in controversy is a chose in action, and could not vest in her husband until she or he had reduced it to possession, which could not be done, by the terms of the will, before she was 18 years of age. If, therefore, when the act of the Mississippi Legislature, securing to married women their property, free from the debts of their husbands, (which went into effect in April, 1839,) the claimant had not attained the age of 18 years, the husband had no legal estate in it, and it could not be subject to this execution; and if they believe from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time jointly with the other executors, such possession vested in him no legal interest by his marriage with the claimant, either to the land or slaves, or other personal property.

To which instructions of the court, the plaintiff excepted, and rendered this his bill of exceptions at the time, before the jury re-

tired from the bar, which he prayed might be signed, sealed, enrolled, and made a part of the record, which is done accordingly.

J. McKINLEY, [SEAL.]

"Therefore it is considered by the court, that the said claimant, Martha A. Sessions, the claimant aforesaid, go hence without day, and recover against the said plaintiff her costs and charges by her about her defence in this be*fore* expended."

Circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing forty-four pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and af-
[SEAL.] fixed the seal of said court, at Jackson, this 13th day of January, A. D. 1843.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, or some of you, between L. Price, jr., for the use of Daniel W. Gantley, *vs.* Martha A. Sessions, a manifest error hath happened, to the great damage of the said L. Price, jr., for the use aforesaid, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and *and* openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the
[SEAL.] year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the 67th.

W. H. BROWN, *Clerk.*

Issued the 28th day of January, A. D. 1843.

UNITED STATES OF AMERICA, *ss:*

To Martha A. Sessions, or her attorneys, Prentiss, Guion, and Smedes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Llewellyn Price, jr., who sues for the use of Daniel W. Gantley, is plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John McKinley, one of the judges of the circuit court of the United States for the southern district of Mississippi, this 26th day of January, in the year of our Lord one thousand eight hundred and forty-three, and in the 67th year of the independence of the United States.

J. McKINLEY.

Service accepted, January 31st, 1843.

PRENTISS & GUION,
Atty's for Martha A. Sessions.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, Daniel W. Gantley, F. Norcom, and E. Mason, are held and firmly bound unto Martha A. Sessions in the just and full sum of two hundred dollars, lawful money of the United States, to be paid to the said Martha A. Sessions, or her lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 1st day of January, A. D. one thousand eight hundred and forty-three.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. 1842, judgment was rendered by said court, in favor of the said Martha Sessions, against the said Daniel W. Gantley for the costs of suit; and the said Daniel W. Gantley hath sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said Daniel W. Gantley shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if he, the said Daniel W. Gantley, shall fail to make his

plea good; then, in that case, this obligation to be void, otherwise to remain in full force and virtue.

Signed, D. W. GANTLEY, [L. s.]
Per NORCOM, *Att'y.*
F. NORCOM, [L. s.]
E. MASON. [L. s.]

Sealed and delivered, in presence of

L. PRICE, use, &c.
vs.
MARTHA A. SESSIONS, claimant. } Supreme Court U. States.

And the said plaintiff, by his attorney, comes and says that, in the record and proceedings of the circuit court of the southern district of Mississippi, in the above case, there is manifest error in this.

1st. The court erred in instructing the jury—

"That the property devised and bequeathed by the will of Russell Smith to the claimant Martha Ann, did not vest in her until she arrived at the age of eighteen years."

2nd. The court erred in instructing the jury—

"That the title to the property did not vest in Egbert J. Sessions until the claimant arrived at 18 years of age."

3rd. The court erred in instructing the jury—

"That the property in controversy is a *chose in action*, and could not vest in the husband of the claimant, until she or he had reduced it to possession."

4th. The court erred in instructing the jury—

"If, when the act of the Mississippi Legislature, securing to married women their property, free from the debts of their husbands, (which went into effect in April, 1839,) the claimant had not attained the age of 18 years, the husband had no legal estate in it, and it could not be subjected to this execution."

5th. The court erred in instructing the jury—

"If they believed, from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time, (when the act of the Legislature of Mississippi, above referred to, was passed,) jointly with the other executors, such possession vested in him no legal *intent* by his marriage with the claimant, either to the land or slaves, or other personal property."

6th. The court instructed the jury contrary to the law of the case.

For these, and other errors apparent upon the record, the judgment should be reversed.

F. NORCOM & J. S. YERGER,
Atty's for plff in error.

Filed, —— 1844.